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No. 02-584

Supreme Court, U.S.
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In The

Supreme Court of the United States

BRUCE MAGERS, TRUSTEE IN BANKRUPTCY FOR BONDS DISTRIBUTING COMPANY, INC.,

Petitioner,

v.

DONALD R. BONDS, BONDS, INC., and WILLIAM L. MILLS, III,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Fourth Circuit

RESPONDENTS' BRIEF IN OPPOSITION

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Supreme Court Rule 29.6, Donald R. Bonds and Bonds, Inc., state that Bonds, Inc. is a privately held North Carolina corporation. None of its shares is held by a publicly traded company.

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STATEMENT OF THE CASE BY DONALD R. BONDS AND BONDS, INC.

In a nutshell, this case arose from an action against Donald R. Bonds ("Mr. Bonds") and Bonds, Inc. by Bruce Magers, the Chapter 7 bankruptcy trustee for a debtor corporation, Bonds Distributing Company, Inc. ("BDI"). The action sought, among other things, to invalidate a security interest which Mr. Bonds had obtained with respect to the assets of BDI. This security interest was granted to Mr. Bonds incident to a leveraged buyout of his stock in BDI by one Steven Young ("Mr. Young"). After approximately 18 months of management under Mr. Young, BDI became insolvent and was placed into involuntary bankruptcy by its creditors. As part of the payment for his stock, which had been redeemed by BDI incident to the buyout, Mr. Bonds accepted a stock purchase note from BDI. BDI defaulted upon the note, and Mr. Bonds foreclosed upon his security interest in BDI's assets.

The trustee sought to invalidate the foreclosure and to reclaim from Mr. Bonds, pursuant to 11 U.S.C. §544, the money equivalent of the assets which he had foreclosed upon. The grounds for this claim were as follows:

Under former North Carolina General Statute ("N.C.G.S.") §25-9-401(a)(c),[1] a financing statement evidencing a security interest had to be filed in 2 places: (a) in the office of the North Carolina Secretary of State, and (b) in the public registry of the county where the debtor

[1] N.C.G.S. §25-9-401 is a part of North Carolina's version of the Uniform Commercial Code ("the Code"). The portion of the Code involved in this case is that governing secured transactions (Article 9).

had its place of business.[2] In this case, it was undisputed that the financing statement filed on behalf of Mr. Bonds with the Secretary of State, while setting forth his name as the secured party, omitted his address. The locally filed financing statement, on the other hand, did include Mr. Bonds' address. The trustee's complaint alleged that the omission of Mr. Bonds' address from the centrally filed financing statement rendered invalid his security interest in the assets of BDI. The complaint alleged numerous other causes of action as well, but all of these other claims were dismissed by the trustee prior to trial. Therefore, the dismissed claims, while referred to in the trustee's petition, are not relevant hereto.

The Bankruptcy Court below granted summary judgment for the trustee on his financing statement claim, holding that the omitted address constituted a fatal defect rendering Mr. Bonds' security interest void. This decision was affirmed by the District Court on appeal without any substantive comment.

This decision was reversed by the Fourth Circuit Court, which found that the omitted address did not constitute a fatal defect in the perfection of Mr. Bonds' security interest. The Fourth Circuit held that the thrust of the North Carolina decisions dealing with the adequacy

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[2] North Carolina has now revised its statutory filing scheme for financing statements. Under the current North Carolina version of Article 9 of the Uniform Commercial Code, a financing statement covering ordinary goods that do not qualify as fixtures or "extracted collateral" is to be filed with the Secretary of State. N.C.G.S. §25-9-501. Therefore, references herein to N.C.G.S. §§25-9-401 and 402 are to provisions of North Carolina law that are not now in effect, but were in effect at the time of the events referred to above.

of financing statements was to the effect that such an omission would not have seriously misled a reasonably diligent record searcher, because the financing statement had been accepted for filing and would have given clear notice of the existence of a prior security interest.[3] The centrally filed financing statement, therefore, fulfilled the underlying policy rationale of former N.C.G.S. §25-9-401; i.e., to give reasonable notice to third parties of the possible existence of prior security interests in property.

REASONS FOR DENYING THE WRIT

I. The Decision of the Fourth Circuit Court Was Correct.

The current petition alleges that the opinion of the Fourth Circuit Court of Appeals "Completely Ignores the Plain Language and the Commentary of Applicable North Carolina Statutes and Misapplies Applicable North Carolina Precedent." This is not so. The Circuit Court's decision specifically took into account all of the North Carolina statutory provisions which were pertinent to the issue presented.

Furthermore, as noted by the Circuit Court, the Bankruptcy Court, in its effort to find favorably for the trustee, searched far and wide for any decision from any

[3] The North Carolina courts have not, to this point, decided a case posing the precise issue of law presented below. Therefore, the function of the Bankruptcy Court (and the District Court) was to predict, on the basis of existing decisions, how the North Carolina courts would rule if confronted with such issue.

jurisdiction that might deem the missing address to be a fatal defect. In this effort, it completely lost sight of the fact that its duty was to predict the application of the law of North Carolina, NOT that of some other state. The Bankruptcy Court simply disregarded the North Carolina decision in *E. B. Grain Co. v. Denton*, 73 N.C.App. 14, 325 S.E.2d 522 (1985), which held that an address for the secured party that was as general as "Whitakers, NC" substantially complied with the requirements for a valid financing statement. The *E. B. Grain Co.* decision clearly indicates that the North Carolina courts would likely hold that a financing statement which omitted an address for the secured party, but which clearly identified that party, would nonetheless be an adequate compliance with N.C.G.S. §25-9-402. The reason: the financing statement would give clear notice to third parties of the possible existence of a prior subsisting security interest.[4]

The trustee cites *In re: Seventeen S. Garmet Co.*, 145 B.R. 511 (E.D.N.C. 1999), and *In re: Environmental Aspecs, Inc.*, 235 B.R. 378 (E.D.N.C. 1999) as standing for

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[4] The following decisions, applying North Carolina law, stand for the proposition that as long as the "reasonable notice" policy underlying N.C.G.S. §25-9-402 is met, omissions from a financing statement that would not seriously mislead a record searcher do not constitute fatal defects: *Evans v. Everett*, 279 N.C. 352, 183 S.E.2d 109 (1971); *In re: Bumper Sales, Inc.*, 907 F.2d 1430 (4th Cir. 1990). See also: the Official Commentary to N.C.G.S. §25-9-402, which states: "This section adopts a 'notice filing' system. . . . Under such a system, the security agreement proper need not be registered; a financing statement containing such general information as is deemed sufficient to put a party searching the record on notice that there is a security agreement outstanding against a particular person covering certain types of collateral is all that need be filed. . . ."

the proposition that the North Carolina courts would hold invalid a financing statement that omitted an address for the secured party. However, those cases did not deal with that issue, and are not applicable to this case. They dealt instead with financing statements which omitted the *debtor's name*. Such a situation is not at all like that presented here. A record searcher finding a financing statement with no name for the debtor would be seriously misled, and that is totally unlike the situation presented in this case.

The petitioner's contention that the Fourth Circuit Court ignored or "misapplied" the law in this case is without merit. The Circuit Court's decision was based upon a clearly reasoned and logical analysis of the law of North Carolina, and is correct. Furthermore, this Court has held that it will ordinarily accept as correct the decisions of Courts of Appeals concerning state laws. *Richards v. United States*, 82 S.Ct. 585, 369 U.S. 1, 7 L.Ed.2d 429 (1962). And the current petition contains no adequate showing of any substantive error by the Fourth Circuit Court warranting the exercise of this Court's discretionary jurisdiction.

II. This Case Does Not Involve Issues Which Necessitate Resolution of Splits of Authority Between the Circuits.

The petitioner asserts that the writ should be granted so that this Court may resolve a split of authority between the Ninth and Fourth Circuits regarding the interpretation of §9-402 of the Uniform Commercial Code. This argument is without merit for the following reasons:

In 2000, North Carolina and a majority of the other states substantially revised their versions of Article 9 of the Code. Specifically, the requirements concerning what must be included in a financing statement and where it must be filed were completely rewritten. Therefore, there is no need for this Court to expend its time and resources to resolve a split of authority in the interpretation of a statute which no longer exists.

Furthermore, the Code, as adopted in varying versions by the states, constitutes state – not federal – law. What the petitioner invites this Court to do is, in effect, to "enact" a uniform, nationwide interpretation of a portion of a law adopted by the various states. Such action would violate basic principles of federalism and should not be countenanced.

III. There Is No Compelling Reason For This Court To Exercise Its Discretionary Authority To Review the Fourth Circuit Court.

The case *sub judice* involves interpretation of "garden variety" North Carolina commercial law. It does not involve the construction of any federal statute or administrative regulation, nor does it involve a determination of the Constitutionality of any state or federal statute or regulation. It has nothing to do with any treaty or international agreement and does not involve any claim by or against the federal government. In short, it contains no dispute the *gravamen* of which would call for an exercise by this Court of its discretionary jurisdiction.

CONCLUSION

For the foregoing reasons, Donald R. Bonds and Bonds, Inc. urge that the petition be denied.

This the 11th day of November, 2002.

Respectfully submitted,

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APPENDIX

N.C.G.S. §25-9-401: Place of filing; erroneous filing; removal of collateral.

(1) The proper place to file in order to perfect a security interest is as follows: . . .

(c) in all other cases, in the office of the Secretary of State and in addition, if the debtor has a place of business in only one county of this State, also in the office of the register of deeds of such county, or, if the debtor has no place of business in this State, but resides in the State, also in the office of the register of deeds of the county in which he resides.

N.C.G.S. §25-9-402: Formal requisites of financing statement; amendments; mortgage as financing statement.

(1) A financing statement is sufficient if it gives the names of the debtor and the secured party, is signed by the debtor, gives an address of the secured party from which information concerning the security may be obtained, gives a mailing address of the debtor and contains a statement indicating that types, or describing the items, of collateral. . . .

(8) A financing statement substantially complying with the requirements of this section is effective even though it contains minor errors which are not seriously misleading.